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In the Supreme Court of the United States

OCTOBER TERM, 1980

PENNHURST STATE SCHOOL AND HOSPITAL, ET AL., PETITIONERS
v.
TERRI LEE HALDERMAN, ET AL.

MAYOR OF CITY OF PHILADELPHIA, ET AL., PETITIONERS
v.
TERRI LEE HALDERMAN, ET AL.

PENNSYLVANIA ASSOCIATION FOR RETARDED CITIZENS, ET AL., PETITIONERS
v.
PENNHURST STATE SCHOOL AND HOSPITAL, ET AL.

COMMISSIONERS AND MENTAL HEALTH/MENTAL RETARDATION ADMINISTRATORS FOR BUCKS COUNTY, ET AL., PETITIONERS
v.
TERRI LEE HALDERMAN, ET AL.

PENNHURST PARENTS-STAFF ASSOCIATION, PETITIONER
v.
TERRI LEE HALDERMAN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES

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v.

TERRI LEE HALDERMAN, ET AL.

No. 79-1408

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v.

TERRI LEE HALDERMAN, ET AL.

No. 79-1414

PENNSYLVANIA ASSOCIATION FOR RETARDED CITIZENS, ET AL., PETITIONERS

v.

PENNHURST STATE SCHOOL AND HOSPITAL, ET AL.

No. 79-1415

COMMISSIONERS AND MENTAL HEALTH/MENTAL RETARDATION ADMINISTRATORS FOR BUCKS COUNTY, ET AL., PETITIONERS

v.

TERRI LEE HALDERMAN, ET AL.

No. 79-1489

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTIONS PRESENTED

1. Whether Section 111 of the Developmentally Disabled Assistance and Bill of Rights Act, 42 U.S.C. 6010, secures to mentally retarded persons the right to appropriate treatment rather than subjection to the conditions demonstrated by this record.

2. Whether such persons have a private remedy to enforce the rights secured by that Section.

3. Whether the relief awarded by the court below was inappropriate.

4. Whether Pennsylvania law provides mentally retarded persons a right to adequate treatment.

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OPINIONS BELOW

The opinion of the court of appeals (J.A. 92a-196a)[1] is reported at 612 F. 2d 84; the opinion of the district court (J.A. 6a-75a) is reported at 446 F. Supp. 1295.

JURISDICTION

The judgment of the court of appeals was entered on December 13, 1979. The petitions in Nos. 79-1404 and 79-1414 were filed on March 12, 1980, and the petitions in Nos. 79-1408 and 79-1415 were filed on March 12, 1980. Mr. Justice Brennan extended the time for filing a petition in No. 79-1489 until April 11, 1980, and that petition was filed on March 20, 1980. All petitions were granted on June 9, 1980. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

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[1] "J.A." refers to the separately bound Joint Appendix in No. 79-1404. "Tr." refers to the trial transcript; "Rice Dep." refers to the deposition of Russel A. Rice, Commissioner of Mental Retardation for Southeastern Pennsylvania, admitted into evidence at Tr. 1-76, 1-77. The cited materials have been designated for inclusion in the Appendix required by the Court's order of October 6, 1980.

In addition, we are lodging with the Court 10 copies of U.S. Ex. 48, which consists of 108 photographs showing the Pennhurst environment (photos 1-56, 96-108), some Pennhurst residents (photos 61-68), and various community living arrangements (photos 59-60, 84-88, 90-92) and community programs for retarded persons in Pennsylvania (photos 57-58, 89, 93-95). The photographs are discussed in testimony by expert witnesses at Tr. 2-37 to 2-67 (photos 1-44); 1-168 to 1-172 (photos 45-56); 6-176 to 6-178 (photos 59 and 60); 6-141 to 6-152 (photos 64, 68, 102, 103); 6-52 to 6-64 (photos 69 through 83); 5-146 to 5-164 (photos 89 through 95).

STATEMENT

A. Procedural History

This case was brought in the United States District Court for the Eastern District of Pennsylvania, to obtain relief from the restrictions imposed upon plaintiffs by conditions in Pennhurst, an institution for the mentally retarded operated by the Commonwealth of Pennsylvania. The plaintiff class includes the approximately 1,230 persons who resided in Pennhurst at the time of trial (J.A. 9a-10a, 19a) and all persons who may in the future be placed in Pennhurst (J.A. 14a). The Pennsylvania Association for Retarded Citizens, several additional individual mentally retarded persons, and the United States intervened as plaintiffs.[2] After a lengthy trial, the district court found that plaintiffs' confinement at Pennhurst and subjection to its conditions violated the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment, Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and a Pennsylvania statute (Pa. Stat. Ann. tit. 50, § 4201 *et seq.* (Purdon 1969)). The district court ordered defendants to phase out Pennhurst, and place its residents in less restrictive community living arrangements established pursuant to Pennsylvania law.[3]

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[2] Following trial, and after notice of appeal had been filed, petitioners in No. 79-1489 sought to intervene in the district court and intervention was denied. The denial was affirmed by the court of appeals (79-1489 Pet. App. 213a), but that court subsequently allowed intervention for the purpose of seeking certiorari, and these petitioners were allowed to intervene in the district court to participate in the proceedings to determine the relief to be awarded (Pet. 5 n.10).

[3] The district court found that "[m]any individuals now living at Pennhurst could be moved immediately into the

While this was being done, conditions at Pennhurst were to be improved. The court appointed a special master to oversee the implementation of its order, including the individual placement decisions.[4]

On appeal, the en banc court of appeals held that defendants were violating both Pennsylvania law and Section 111 of the Developmentally Disabled Assistance and Bill of Rights Act, 42 U.S.C. 6010. Applying the standards of *Cort* v. *Ash*, 422 U.S. 66, 78 (1975), the court also concluded that the statute authorized plaintiffs' suit (J.A. 114a-122a). The court of appeals did not reach defendants' challenge to the district court's holding that they had violated the Constitution and Section 504 of the Rehabilitation Act of 1973 (J.A. 131a, 141a).[5]

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community and would be able to cope with little or no supervision. * * * All the parties in this litigation are in agreement that given appropriate community facilities, all the residents at Pennhurst, even the most profoundly retarded with multiple handicaps, should be living in the community" (J.A. 43a).

In its memorandum accompanying its relief order, the district court noted that "the Commonwealth defendants agreed that the retarded should be removed from Pennhurst and readily admitted that the only reason that the litigation was necessary was because they wished to accomplish the closing of Pennhurst as a residence for the retarded, pursuant to their own schedule which was vague and indefinite" (J.A. 78a).

[4] The district court first attempted, without success, to obtain from the defendants proposals for implementing appropriate relief (J.A. 77a-79a).

[5] No question relating to these claims is presented by the petitions. Since we believe the court of appeals' holding was correct, we do not discuss the district court's holdings on these claims as alternative grounds for affirmance. See *Cole*

The court of appeals substantially affirmed the district court's order. It reversed that part of the order requiring the closing of Pennhurst, and instead directed the district court, with the assistance of the special master, to consider the possibility, when making the individual placement decisions required by the district court's order, that in an extreme situation remaining at an "improved Pennhurst" might be the appropriate placement (J.A. 156a).[6]

Three judges dissented (J.A. 162a). They would have found that conditions at Pennhurst violated plaintiffs' constitutional and statutory rights, but would not have required changing any class member's placement.

B. Facts

The district court found, and the court of appeals affirmed, "that Pennhurst as an institution is inappropriate and inadequate for the habilitation of the retarded," and that it was admitted by the defendants that "Pennhurst does not meet minimally acceptable professional standards" (J.A. 23a, 47a).[7]

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v. *Ralph*, 252 U.S. 286, 289-290 (1920); cf. *Mazer* v. *Stein*, 347 U.S. 201, 208 n.6 (1954); *General Talking Pictures* v. *Western Electric*, 304 U.S. 175, 177-179 (1938). Should the Court agree with petitioners' contentions on the issues presented, the case should be remanded to the court of appeals to consider the district court holdings concerning the Constitution and Section 504. *FTC* v. *Travelers Health Ass'n*, 362 U.S. 293, 298-299 n.4 (1960); *United States* v. *Fleischman*, 339 U.S. 349, 365 (1950); *Owens* v. *Union Pacific Ry.*, 319 U.S. 715, 724 (1943).

[6] The presumption for every individual was to be that community placement was preferable to continued institutionalization.

[7] " 'Habilitation' is the term of art used to refer to that education, training and care required by retarded individuals

1. *Conditions at Pennhurst*

The Commonwealth of Pennsylvania owns and operates Pennhurst for the purpose of providing care, education and training to each of its 1230 residents. The facility, founded in 1908, is located near Spring City, Pennsylvania, a small rural town approximately 30 miles from Philadelphia (J.A. 18a-19a).

Pennhurst is a self-contained unit, and its residents do not participate to the degree each is able in normal community life outside of the institution (J.A. 19a, 21a, 43a). About half of the residents of Pennhurst were committed there by court order and half were placed there by a parent or other guardian (J.A. 20a). Those who are over eighteen and who indicate a desire to leave are kept there by court order if the Pennhurst staff ascertains that they are not "ready to go into the community" or if there is no available placement for them in the community (J.A. 40a). Twenty-six percent of the residents are mildly or moderately retarded and 74% are severely or profoundly retarded (J.A. 20a).[8] They are not mentally or emotionally ill, and are not a danger to society

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to reach their maximum development" (J.A. 10a). Unlike mentally ill persons, mentally retarded persons cannot be cured, because mental retardation "is an impairment in learning capacity and adaptive behavior" (J.A. 10a, 49a-50a). However, mentally retarded persons can learn and develop with habilitation—training programs given in settings that enable them to achieve the level of independence and self-care that their abilities permit (J.A. 10a, 41a-42a).

[8] Mental retardation is measured both by intelligence quotient (I.Q.) and by ability to cope with the environment. In general, the I.Q. of a profoundly retarded person is less than 20, of a severely retarded person between 20 and 35, of a moderately retarded person between 36 and 51, and of a mildly retarded person between 52 and 69 (J.A. 10a).

(J.A. 47a). The average Pennhurst resident has spent 21 years there and is 36 years old.[9]

While at Pennhurst, the residents regress, both intellectually and behaviorally; instead of learning self-care skills, they lose them.[10] Maladaptive behavior[11] and regression result from over-crowded wards, lack of privacy, lack of training programs, and an oppressive environment (J.A. 21a, 22a-27a, 34a-36a). The district court also found all those conditions to be typical at Pennhurst.[12] See lodging, photos 1-10, 15-17, 19, 21, 23, 24, 26-33, 40-44, 50, 52-56, 97-108.

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[9] Forty-three percent of the residents had no contact with their families within three years of the trial (J.A. 20a).

[10] Terri Lee Halderman lost her ability to speak (J.A. 36a). Linda Taub, who is blind in addition to being retarded, spent her time sitting and rocking; she was strapped to a wheel chair, though she is able to walk, so the staff "would know exactly where Linda was." Nancy Beth Bowman developed maladaptive behavior—biting and pushing (J.A. 36a-40a).

[11] Maladaptive behavior includes rhythmic motions such as rocking, as well as self injury or severe aggression. This behavior is associated with lack of stimulation and boredom (Tr. 1-96 to 1-98, 5-112). Moreover, exclusive association with others who engage in deviant behavior encourages maladaptive behavior (Tr. 1-151, 2-59, 5-91 to 5-92, 5-113).

[12] There is often excrement and urine on ward floors. Infectious diseases are common (J.A. 34a). Obnoxious odors and excessive noise are prevalent. The noise level is frequently so high that many residents stop speaking. Meals are eaten in large groups without adequate staff supervision where residents may steal food from each other, so some do not get enough to eat (J.A. 35a). Lodging photos 34, 36, 37.

The district court also found that the residents at Pennhurst are harmed physically (J.A. 34a-36a).[13] Many physical injuries are the product of staff neglect and abuse.[14] In addition, the void left by the lack of proper habilitation is filled by extreme use of physical and chemical restraints, and seclusion (J.A. 23a-33a).[15] Physical restraints and seclusion not only have caused physical injuries, but they also prevent residents from learning and using self-care skills (J.A. 31a-32a, 39a-40a).[16]

The "extraordinarily high" (J.A. 32a) administration of drugs at Pennhurst is also harmful. It not only causes hazardous side effects, *e.g.*, hypersensitivity to sunlight, inability to maintain balance and gait, inflammation, bleeding and growth of gum tis-

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[13] Plaintiff Terri Lee Halderman, a resident for eleven years, suffered lost teeth, fractured fingers and toes, and numerous lacerations (J.A. 36a). Plaintiffs DiNolfi (a resident for 34 years), Robert and Theresa Sobetsky (residents since 1971), Hight (a resident for two and one-half weeks), Sorotos (a resident for seven years), Larry and Kenny Taylor (residents for 14 years), Bowman and Taub all received physical injuries, including one resulting in loss of an eye, bruises, bites, scratches, welts, and injuries causing lost teeth (J.A. 36a-40a).

During the single month of January 1977 there were 25 major and 833 minor injuries reported (J.A. 35a).

[14] Staff neglect has even resulted in deaths (J.A. 35a-36a).

[15] One resident was physically restrained for 651 hours in June 1976, 720 hours in August 1976, 674 hours in September 1976, and 647 hours in October 1976 (J.A. 31a).

[16] The seclusion rooms at Pennhurst have hard surfaces, exposed radiators and other dangerous features (J.A. 30a n.34; see lodging photos 97, 98, 100, 101). Seclusion is often used as a substitute for staff attention (J.A. 30a).

sue; it also impedes the habilitation of Pennhurst residents when used as a control device (J.A. 33a).[17]

In sum, the district court found that Pennhurst provides "confinement and isolation, the antithesis of habilitation" (J.A. 58a). Its atmosphere is not conducive to the "normalization which is so vital to the retarded if they are to be given the opportunity to acquire, maintain and improve their life skills" (*ibid.*).[18]

2. *Pennsylvania's Program for Mental Retardation*

Pennsylvania's objective in maintaining a mental retardation program is to provide services that will help mentally retarded persons learn and develop (J.A. 41a, 47a-48a). The Pennsylvania Department of Welfare, which operates Pennhurst (J.A. 19a, 47a-48a), has overall responsibility for assuring "the availability and equitable provision of adequate * * * mental retardation services for all persons who need them." Pa. Stat. Ann. tit. 50, § 4201(1) (Purdon 1969). County officials in Pennsylvania are responsible for identifying mentally retarded persons in need of services. Through their "base service units," they determine the setting in which individuals will receive these services (J.A. 45a; see Pa. Stat. Ann. tit. 50, § 4302 (Purdon 1969)). Although State policy strongly favors habilitation of retarded individuals within their communities, the defendant county officials have failed substantially to comply

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[17] Larry Taylor was given unneecssary medication that caused him to fall asleep in school (J.A. 38a).

[18] The district court's graphic description (J.A. 18a-46a) of conditions at Pennhurst, summarized above, was accepted by the court of appeals (J.A. 106a) and is not challenged here.

with this policy for Pennhurst residents (J.A. 41a, 43a, 46a).

The Department of Welfare receives funding requests from the counties, reviews them and incorporates them into the appropriation requests for mental health and mental retardation services. The funds are then made available to the counties through the Department of Welfare (Rice Dep. 77-86, 89-92, 95-97, J.A. 106a-107a). Funds available under federal law for mental retardation services are paid to the Department of Welfare, which includes these funds in its spending allocations. For example, the federal funds paid to Pennsylvania under the Developmental Disabilities Act are included in the state budget for mental retardation services, and are distributed by the state to the counties through the Department of Welfare (Rice Dep. 121A-125A, 136A, 138A-140A). Similarly, part of Pennsylvania's "Medicaid" funds (42 U.S.C. 1396d) are used to fund Pennhurst (Rice Dep. 126-127).[19]

3. *Alternative Habilitative Settings in Pennsylvania*

Pennsylvania has adopted a policy of establishing community living arrangements for the care and training of mentally retarded persons (J.A. 41a, 43a).[20] The district court found that policy was

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[19] For fiscal 1975-1976, $5,870,000 in Medicaid funds were paid to Pennhurst (Tr. 26-14). For that year, the counties received $661,705 in Developmental Disabilities Act funds (PARC Ex. 65 at 61).

[20] In community living arrangements, retarded persons live in appropriately structured environments in family-type dwellings in residential neighborhoods. They participate in the life of the community to the extent that they are able to

based on two considerations: First, it gives effect to the principle of "normalization" that Pennsylvania authorities espouse—namely, that the retarded person should be treated as much like the non-retarded person as possible (J.A. 41a-43a).[21] Second, the costs of providing habilitative services in the community are markedly lower than the cost of maintaining persons in Pennhurst (J.A. 44a).

The services required to habilitate mentally retarded persons locally exist in the five counties from which Pennhurst draws its residents. Persons of all levels of retardation reside in various living arrangements in these counties and receive the services they need (J.A. 42a-43a). Moreover, in 1970, the Pennsylvania legislature appropriated $21 million for planning, designing and constructing additional community facilities to enable 900 Pennhurst residents to be transferred to the community. By trial time in 1977, however, only 37 Pennhurst residents had been transferred to new facilities, and more than $18

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do so; for example, they may attend educational programs in local schools and churches, work at suitable jobs, enjoy community recreation facilities, or shop in community stores (Tr. 5-141 to 5-142, 5-160 to 5-161, 6-7 to 6-10, 6-29 to 6-31, 6-170 to 6-172, 6-173 to 6-174, 6-176 to 6-177, 7-69 to 7-70, 8-4 to 8-44, 8-47, 8-51 to 8-52, 10-66 to 10-108, 10-104 to 10-174, 11-38 to 11-52, 11-62 to 11-78, 11-80, 11-81, 11-109).

[21] The district court agreed that this principle was a proper one, crediting evidence that the "smaller the living unit in which the retarded individual lived, the higher the level of behavioral functioning shown by the individual" (J.A. 41a), and that "once removed from depressing, restrictive routines, the retarded have been able to accomplish a great deal" (J.A. 42a).

million of the appropriation remained unspent (J.A. 43a-44a).[22]

SUMMARY OF ARGUMENT

Section 111 of the Developmentally Disabled Assistance and Bill of Rights Act provides that the developmentally disabled "have a right to appropriate treatment services and habilitation * * * which should be provided in the setting that is least restrictive of the person's personal liberty", and that the "Federal Government and the State both have an obligation to assure that public funds are not provided" to any institution that does not provide appropriate care, and does not meet minimum standards for decent living conditions. This clear statement of individual rights is the result of a legislative compromise between the Senate's desire to impose detailed federal standards requiring the least restrictive appropriate treatment and the House of Representatives' preference for financial incentives to encourage the states to adopt de-institutionalization programs. Although the compromise eliminates the detailed statutory treatment standards proposed by the Senate, it retains the Senate's emphasis on the individual's right to appropriate treatment as well as to humane living conditions, and expresses a strong preference for de-institutionalization.

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[22] Pennsylvania officials plan to spend $1,028,327 at Pennhurst to correct Safety Code violations, and $2,367,500 to meet medical care standards. With these expenditures, and by reducing the Pennhurst population to 850, they expect to certify all Pennhurst wards for Medicaid payments (J.A. 19a n.14).

The right to appropriate treatment is judicially enforceable by institutionalized individuals. The claim that public officials acting under color of state law have deprived plaintiffs of their civil rights guaranteed by Section 6010 is cognizable under 42 U.S.C. 1983 and also directly under 42 U.S.C. 6010. The language of Section 6010, as well as its legislative history and the structure of the Developmental Disabilities Assistance and Bill of Rights Act, shows that Congress intended to give institutionalized individuals a cause of action, in addition to the express remedy of a fund cutoff by the Secretary of Health and Human Services.

In light of the pervasive violations of the rights guaranteed by Section 6010 shown by this record, the remedy approved by the court of appeals was fully justified. That remedy implements the statutory preference for de-institutionalization by requiring a presumption in favor of reassignment to community living arrangements, while permitting continued confinement at an improved Pennhurst if that is found to be the most appropriate placement.

The obligation in this case to provide adequate services to the mentally retarded in an environment as similar to normal as possible is based on state, as well as federal, law.

ARGUMENT

I. THE "BILL OF RIGHTS" SECTION OF THE DEVELOPMENTALLY DISABLED ASSISTANCE AND BILL OF RIGHTS ACT SECURES THE RIGHT TO APPROPRIATE TREATMENT

The court of appeals properly held that inappropriate placement at Pennhurst violated Section 111 of the Developmentally Disabled Assistance and Bill of Rights Act, 42 U.S.C. 6010 (J.A. 200a).[23]

Section 6010 is a clear statement that developmentally disabled persons (including those who are mentally retarded),[24] who have been placed in in-

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[23] This Act, Pub. L. No. 94-103, 89 Stat. 486, amended and renamed the Developmental Disabilities Services and Facilities Construction Act, Pub. L. No. 88-164, 77 Stat. 282. The amended Act provides funds for construction and for special projects to service developmentally disabled persons, and provides allotments to assist states in their programs for developmentally disabled persons. 42 U.S.C. 6062, 6063. Section 6010 is part of Title II of the Act, called the "Bill of Rights." Titles I and III of the Act contain the funding arrangements. The plans required as a condition of receiving a state allotment under Title III (42 U.S.C. 6061-6068) cover all aspects of the states' service delivery systems for the developmentally disabled. See, *e.g.*, 42 U.S.C. (Supp. II) 6063 (b) (1) and 6063(b) (2) (B); see also H.R. Rep. No. 94-58, 94th Cong., 1st Sess. 4-5 (1975); H.R. Rep. No. 95-1188, 95th Cong., 2d Sess. 4-5 (1978).

[24] A developmental disability is "a severe, chronic disability of a person which—(A) is attributable to a mental or physical impairment or combination of mental and physical impairments; (B) is manifested before the person attains age twenty-two; (C) is likely to continue indefinitely; (D) results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and (E) reflects

stitutions at federal and state expense, have certain rights.[25] Where there is such federal and state sup-

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the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated." 42 U.S.C. (Supp. II) 6001(7); cf. 42 U.S.C. 6001(7).

[25] 42 U.S.C. 6010 provides in pertinent part:

> Congress makes the following findings respecting the rights of persons with developmental disabilities:
>
> (1) Persons with developmental disabilities have a right to appropriate treatment, services, and habilitation for such disabilities.
>
> (2) The treatment, services, and habilitation for a person with developmental disabilities should be designed to maximize the developmental potential of the person and should be provided in the setting that is least restrictive of the person's personal liberty.
>
> (3) The Federal Government and the States both have an obligation to assure that public funds are not provided to any institutional or other residential program for persons with developmental disabilities that—
>
> (A) does not provide treatment, services, and habilitation which is appropriate to the needs of such persons; or
>
> (B) does not meet the following minimum standards:
>
> (i) Provision of a nourishing, well-balanced daily diet * * *
>
> (ii) Provision * * * of appropriate and sufficient medical and dental services.
>
> (iii) Prohibition of the use of physical restraint * * * unless absolutely necessary and prohibition of the use of such restraint

port, as there is at Pennhurst, this succinct statement of rights imposes on the state and federal governments an obligation to ensure that institutionalized persons [26] are free from harmful conditions such as those found at Pennhurst—*i.e.*, from treatment that is not "appropriate", and from conditions that do not meet minimum living standards.[27]

> as a punishment or as a substitute for a habilitation program.
>
> (iv) Prohibition on the excessive use of chemical restraints * * * and the use of such restraints as punishment or as a substitute for a habilitation program or in quantities that interfere with services, treatment, or habilitation * * *.
>
> (v) Permission for close relatives * * * to visit * * * at reasonable hours * * *.
>
> (vi) Compliance with adequate fire and safety standards as may be promulgated by the Secretary.
>
> (4) All programs for persons with developmental disabilities should meet standards which are designed to assure the most favorable possible outcome for those served * * *.

[26] The question whether 42 U.S.C. 6010 rights extend to developmentally disabled persons who are in a non-residential state sponsored program is not presented here (Pet. Br. 10). However, the "obligation" extends explicitly to "any institutional or other residential program." 42 U.S.C. 6010(3).

[27] Although petitioners suggest (Br. 10) that more than two million persons are covered by the Act, the district court noted (J.A. 13a-14a n.7) that nationwide in 1976 there were 154,000 mentally retarded persons in public institutions, 32,000 in hospitals for the mentally ill and 32,000 in private institutions of various kinds. Petitioners offer no reason to suggest that these numbers have substantially increased since 1976, and we are aware of none.

While phrased as "findings," 42 U.S.C. 6010 is more than simply an expression of hope or a guide for the use of federal funds. The statement of "a right" in subsection 6010(1) is supplemented by subsection 6010(3), which plainly places the corresponding duty on the Federal Government and the States. The mandatory language of these two subsections contrasts with the use of the word "should" in subsections 6010(2) and 6010(4).[28] Congress could scarcely have stated more clearly its intent to assure that developmentally disabled persons have the right to appropriate treatment, as well as to humane living conditions.[29] That intent was further emphasized by the 1978 amendment to the section,[30] which states

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[28] Subsection 6010(2), which provides that treatment and habilitation "should be designed to maximize the developmental potential of the person and should be provided in the setting that is least restrictive of the person's personal liberty", aids in determining whether a particular habilitation program is "appropriate" and makes clear that Congress approved the "least restrictive alternative" concept, although the statute also contemplates appropriate institutional care for some developmentally disabled persons.

[29] Petitioners agree (Br. 11 n.18) that "a State must run its institutions for the retarded in a decent and humane fashion", but they incorrectly conclude that is the limit of the duty. The statute does not say that *either* appropriate treatment *or* humane living conditions is required. If it did, it would authorize incarceration of a mentally retarded person regardless of that person's developmental potential or ability for self-care as long as living conditions were humane, a clear violation of *O'Connor* v. *Donaldson*, 422 U.S. 563, 575 (1975). In light of the legislative history discussed *infra*, pages 18-20, Congress could hardly have limited the statutory guarantee to humane living conditions.

[30] Congressional intent may be clarified by the treatment of a statute in later amendments. *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367 (1969).

that "[t]he rights * * * described" in Section 6010 are "in addition to any constitutional or other rights" afforded to all persons (42 U.S.C. (Supp. II) 6010).[31]

The statutory language thus indicates that Section 6010 rights, like the "constitutional or other rights" to which they are analogized, are intended to be legally enforceable. Moreover, the legislative history demonstrates that Congress intended the statute to have the legal effect of securing and protecting the rights of mentally retarded persons in the care of the state. Section 6010 was enacted through a compromise between the Senate and the House of Representatives. In 1975, both houses of Congress passed bills aimed at (1) improving the conditions under which the nation's mentally retarded and other developmentally disabled persons are cared for, and (2) moving persons out of institutions and into community based programs. The House bill, H.R. 4005, 94th Cong., 1st Sess. (1975), relied on achieving these objectives through financial incentives. See 121 Cong. Rec. 9976-9982 (1975); H.R. Rep. No. 94-58, 94th Cong., 1st Sess. (1975). The Senate bill, S. 462, 94th

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[31] The 1978 amendments also require the state plans to provide protection, "consistent with section 6010" of "the human rights of all persons * * * receiving treatment, services, or habilitation under programs assisted under this chapter" (42 U.S.C. (Supp. II) 6063(b)(5)(C)). The statutory framework of the Developmental Disabilities Act, requiring the Secretary to approve a state plan as a condition of the state receipt of federal funds, is analogous to the state plan requirements of the Social Security Act, 42 U.S.C. 602. This Court recognized in *Maine* v. *Thiboutot*, No. 79-838 (June 25, 1980), that the Social Security Act requirements for state plans are judicially enforceable. It follows that the requirements in the similar Developmental Disabilities Act state plans are also judicially enforceable. See also *King* v. *Smith*, 392 U.S. 309, 316-317 (1968).

Cong., 1st Sess. (1975), would also have employed financial incentives, but it contained in addition a Title II, called the "Bill of Rights," intended to provide measures for protection of the rights of mentally retarded persons who are in the federally subsidized care of the states. See 121 Cong. Rec. 16470-16523 (1975); S. Rep. No. 94-160, 94th Cong., 1st Sess. (1975).

A. The Senate bill

The Senate's "Bill of Rights" title would have required states to comply with detailed federal statutory standards in providing both institutional and community based services for developmentally disabled persons, S. 462, *supra*; S. Rep. No. 94-160, *supra*, at 45-76.[32] The Senate thought that adoption of these standards for programs and living conditions in institutions was necessary to protect the human rights of persons confined to institutions. S. Rep. No. 94-160, *supra*, at 34.

Much of the record before the Senate reflected its concern about conditions in state institutions for the mentally retarded revealed in various federal civil suits seeking to protect the constitutional rights of persons confined in those institutions. See, *e.g.*, S. Rep. No. 94-160, *supra*, at 30-31. The Senate committee report points out that the court in *Wyatt* v. *Stickney*, 325 F. Supp. 781 (M.D. Ala. 1971), aff'd *sub nom. Wyatt* v. *Aderholt*, 503 F.2d 1305 (5th Cir. 1974), defined "minimum constitutional standards for adequate treatment," including the "[r]ight to

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[32] The bill would have prescribed, *inter alia*, evaluation and performance criteria, *id.* at 49; administrative policies, *id.* at 54-56, staff activities and living unit "atmosphere," *id.* at 56-58; standards for professional services, *id.* at 58-59; safety and sanitation standards (*e.g.* prohibition of lead based paint), *id.* at 60; types of recreation and leisure activities, *id.* at 67; and the form and content of records, *id.* at 73.

the least restrictive condition necessary to achieve the purpose of confinement." S. Rep. No. 94-160, *supra*, at 31. Far from expressing any disagreement with these minimum standards, the committee report emphasizes that "[e]very effort should be made to insure that our developmentally disabled citizens are provided every opportunity of being cared for in the least restrictive setting that is consistent with the person's ability for self-care". S. Rep. No. 94-160, *supra*, at 33.[33]

Of particular concern to the proponents of the Senate bill was the federal financial support to institutions where mentally retarded persons were being harmed instead of helped. Senator Javits, the author of the Senate's Bill of Rights (S. Rep. No. 94-160, *supra*, at 29), admonished the Senate, 121 Cong. Rec. 16519 (1975):

> Progress toward recognition of the basic human and civil rights of the mentally retarded and other developmentally disabled persons has been slow. The Federal Government has largely abrogated its responsibility in this regard and recently the greatest initiatives have come from our courts.
>
> Congress should reaffirm its belief in equal rights for all citizens—including the developmentally disabled. Congress should provide the leadership to change the tragic warehousing of

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[33] This reference shows that the Senate endorsed the "least restrictive alternative" standard; it is not necessary for this Court to decide here whether that standard is in fact constitutionally based. Cf. *O'Connor* v. *Donaldson*, 422 U.S. 563, 575 (1975); *Shelton* v. *Tucker*, 364 U.S. 479, 488-490 (1960); *Humphrey* v. *Cady*, 405 U.S. 504 (1972); *Jackson* v. *Indiana*, 406 U.S. 715, 738 (1972); *Vitek* v. *Jones*, No. 78-1155 (March 25, 1980); *Parham* v. *J.R.*, 442 U.S. 584 (1979); *Addington* v. *Texas*, 441 U.S. 418 (1979).

> human beings that has been the product of insensitive Federal support of facilities providing inhumane care and treatment of the mentally retarded.

As one means of providing this leadership, the Senate proposed to terminate all federal funds going to any institution if it did not comply with the Senate's detailed and extensive program standards within five years. S. 462, *supra*, at § 206; S. Rep. No. 94-160, *supra*, at 35.[34]

The salient circumstances, therefore, that prompted the Senate's "Bill of Rights" were: (1) the Senate found that confinement of mentally retarded persons in many of the nation's institutions was not beneficial and was often harmful to those persons, (2) the federal courts had held that persons placed in these institutions had a right to appropriate treatment,[35] and (3) federal and state governments were supporting these institutions.

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[34] Foremost among the federal funds which support these facilities are funds under Title XIX of the Social Security Act, 42 U.S.C. 1396d(c) and (d) ("Medicaid"). Petitioners amply demonstrate that "Medicaid" funds going to Pennhurst alone dramatically exceed the funds under the Developmentally Disabled Act going to Pennsylvania's statewide program for mentally retarded persons (Br. 13 n.22, 26 n.43).

[35] *Wyatt* v. *Stickney, supra; Welsch* v. *Likins*, 373 F. Supp. 487, 499 (D. Minn. 1974), aff'd and vaacted in part, 550 F.2d 1122 (8th Cir. 1977); *Gary W.* v. *Louisiana*, 437 F. Supp. 1209, 1219 (E.D. La. 1976); *Davis* v. *Watkins*, 384 F. Supp. 1196, 1206 (N.D. Ohio 1974). The Fifth Circuit had affirmed a "right to treatment" holding, *Wyatt* v. *Aderholt*, 503 F.2d 1305 (5th Cir. 1974), and had upheld a jury verdict on a "right to treatment" theory in *Donaldson* v. *O'Connor*, 493 F.2d 507, 521 (5th Cir. 1974), vacated and remanded, 422 U.S. 563 (1975). See also *Burnham* v. *Department of Public*

B. The House of Representatives Bill

The House of Representatives also expressed concern over both inappropriate placement of individuals in institutions and retention of individuals in inhumane and non-habilitative institutions. See Pet. Br. 19-20. Its bill to revise the Developmental Disabilities Services and Facilities Construction Act would have required states to "spend a specified percentage of their allotments for programs for deinstitutionalization of persons with developmental disabilities inappropriately placed in institutions." H.R. Rep. No. 94-58, *supra*, at 1-2. States were to plan "for as much deinstitutionalization as is feasible"; it was "anticipated that these requirements will prompt some movement of patients from State institutions back into their communities." The House Committee "hoped that corresponding amounts of State and other funds currently being spent on institutional care will be rebudgeted for community care, an obvious rebudgeting which has not always occurred in conjunction with deinstitutionalization." *Id.* at 10.[36]

Health, 503 F.2d 1319 (5th Cir. 1974), cert. denied, 422 U.S. 1057 (1975). The District of Columbia Circuit had suggested that confinement of a person for treatment without providing treatment might contravene the Due Process Clause. *Rouse* v. *Cameron*, 373 F.2d 451, 455 (D.C. Cir. 1966). Public officials in New York had virtually conceded a right to treatment and had agreed to an extensive remedy for unconstitutional conditions in the Willowbrook institution. *New York State Ass'n for Retarded Children* v. *Carey*, 393 F. Supp. 715 (E.D.N.Y. 1975).

[36] The House Report included a report from the Secretary of Health, Education, and Welfare on the proposed legislation. The Secretary wrote: "[w]hile we are in basic agreement with the thrust of [the Senate's "Bill of Rights"] * * *, we do not believe that the standards set forth in title II are achievable at the present time; nor are they the best means of

C. The Compromise

Both the House and Senate recognized the need to eliminate inappropriate institutional treatment, but they proposed different solutions. The House, though supporting efforts to enhance the legal rights of the retarded, relied principally on the financing of additional community care facilities to accept the persons inappropriately placed in institutions. The Senate, though it would have provided federal funds for services for developmentally disabled persons, focused on the need to halt infringements of rights resulting from subjection of persons to harmful conditions in institutions supported by federal funds.

These differing approaches were compromised by building on existing HEW standards for mental retardation institutions. 42 U.S.C. 6010(4)(A) (H.R. Conf. Rep. No. 94-473, 94th Cong., 1st Sess. 43 (1975); 121 Cong. Rec. 29820 (1975)).[37] The Secretary of Health, Education, and Welfare was directed to review and evaluate the quality standards under various statutes for their effectiveness in assuring the rights secured by Section 6010, and to report to Congress recommendations for additional legislation. Pub. L. No. 94-103, Section 204, 89 Stat.

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improving the quality of care provided to persons in these facilities." H.R. Rep. No. 94-58, *supra*, at 21-23.

[37] "The conference committe recognizes that the six minimum standards [of 42 U.S.C. 6010(3)(B)] * * * will not in themselves ensure quality habilitation and adequate treatment programs. The committee therefore does not intend these standards to preempt or supplant any existing Federal or State standards currently in force (e.g., standards applicable to Intermediate Care Facilities for the Mentally Retarded under Medicaid), which may require more detailed or higher standards of care."

504.[38] The compromise also expressed a preference for treatment "designed to maximize developmental potential" in the "setting least restrictive of personal liberties" (42 U.S.C. 6010(2)), thus recognizing the principle cited by both houses in their reports that mentally retarded persons benefit from treatment that is in a setting as much like normal life as is possible. Cf. J.A. 41a-42a, 62a.[39] It was explicitly required, however, that treatment, services and habilitation be "appropriate." This requirement reflected the Senate understanding of the legal rights of institutionalized persons. The conference reported: "The conference substitute contains a compromise which specifies rights of the developmentally disabled" (121 Cong. Rec. 29819 (1975)).

Nothing in the legislative history suggests that the House demanded, or that the Senate acceded to,

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[38] Consistent with its reluctance to adopt detailed uniform standards for all federally assisted programs, the House, when it received the recommendations, took no steps to enact them into law. See *Developmental Disabilities Act Amendments of 1978: Hearings on H.R. 11764, 2151 and 10059 Before the Subcomm. on Health and Environment of the House Comm. on Interstate and Foreign Commerce*, 95th Cong., 2d Sess. 471-478 (1978); H.R. Rep. No. 95-1188, 95th Cong., 2d Sess. (1978). It did agree to amend Section 6063 (describing the requirements for state plans) to require the state plans to provide protections for Section 6010 rights. 42 U.S.C. (Supp. II) 6063(b)(5)(C). See note 31, *supra*.

[39] The preference may have a more fundamental legal basis. Mr. Chief Justice Burger, in his concurring opinion in *O'Connor* v. *Donaldson*, *supra*, 422 U.S. at 589, rejected "the theory that a State may lawfully confine an individual thought to need treatment and justify that deprivation of liberty solely by providing some treatment. Our concepts of due process would not tolerate such a 'trade-off'." See also cases cited in note 33, *supra*.

abandonment of measures to secure the legal rights of institutionalized persons for which the Senate found so compelling a need.[40] On the contrary, the conference report states (121 Cong. Rec. 29819 (1975)):

> These rights are generally included in the conference substitute in recognition by the conferees that the developmentally disabled, particularly those who have the misfortune to require institutionalization, have a right to receive appropriate treatment for the conditions for which they are institutionalized, and that this right should be protected and assured by the Congress and the courts.

II. PLAINTIFFS MAY MAINTAIN THIS ACTION TO VINDICATE THEIR SECTION 6010 RIGHTS

Both 42 U.S.C. 1983 and Congress' intent in enacting Section 6010 support plaintiffs' right to maintain an action to remedy their subjection to treatment, services and habilitation that is not "appropriate to [their] needs" in an institution that "does not meet * * * minimum standards."

A. Section 1983 authorizes the action

The complaint in this case relied on Section 1983 as a basis for maintaining the actions (Plaintiffs' Second Amended Complaint at 3). That Section provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any

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[40] Senator Javits, a principal sponsor of the "Bill of Rights," in lauding its passage said, 121 Cong. Rec. 29820 (1975); "I am particularly pleased that the conferees have included as title II essentially the 'Bill of Rights for the Mentally Retarded' which I originally introduced on June 28, 1972, in response to the tragic situation of institutionalized mentally retarded patients across the Nation."

> State * * * subjects * * * any * * * person * * * to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The defendants are state and local government officials who operate Pennsylvania's system of care for the mentally retarded "under color of" state statutes, regulations, customs and usages. See *Monroe* v. *Pape*, 365 U.S. 167 (1961); *Monell* v. *New York City Dep't of Social Services*, 436 U.S. 658 (1978). Plaintiffs' claim that they have been deprived of rights guaranteed by Section 6010 thus is cognizable under Section 1983 if those rights are "secured by the Constitution and laws" of the United States.[41]

This Court has recently emphasized that Section 1983 provides a remedy "broadly encompass[ing] violations of federal statutory as well as constitutional law." *Maine* v. *Thiboutot*, No. 79-838 (June 25, 1980), slip op. 3. But even before that decision, it was recognized that Section 1983 provided a remedy for civil rights and equal protection laws (slip op. 5; slip op. 1, 6, 11 (dissenting opinion)). Since Section 6010 is designed to secure civil rights and equal protection, it is not the kind of law that divided the Court in *Thiboutot*.[42]

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[41] "Secured" as used in Section 1983 means "created" or "protected." *Hague* v. *CIO*, 307 U.S. 496, 526-527 (1939).

[42] Petitioners (Br. 29) rely on a footnote in the dissent in *Thiboutot*, indicating that Section 1983 is inapplicable "where the governing statute provides an exclusive remedy for violations of its terms" (slip op. 12, n.11 (dissenting opinion)). As we demonstrate *infra*, pages 28-32, the Developmental Disabilities Act is not such a statute. See *Chapman* v. *Houston Welfare Rights Organization*, 441 U.S. 600, 672 (1979) (White, J., concurring).

B. Section 6010 itself authorizes a private remedy

In *Cort* v. *Ash*, 422 U.S. 66, 78 (1975), this Court identified four factors to determine Congress' intent with respect to allowing a private right of action in a federal statute that does not expressly provide such a remedy:

> First, is the plaintiff "one of the class for whose *especial* benefit the statute was enacted" * * *—that is, does the statute create a federal right in favor of the plaintiff? Second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one? * * * Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff? * * * And finally, is the cause of action one traditionally relegated to state law, in an area basically the concern of the States, so that it would be inappropriate to infer a cause of action based solely on federal law?

Applying these factors to the "Bill of Rights" provisions of the Developmentally Disabled Assistance and Bill of Rights Act, the court of appeals concluded that the provisions created an implied private cause of action (J.A. 115a-121a).[43] The correctness

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[43] One other court of appeals has held that Section 6010 creates an implied private right of action. *Naughton* v. *Bevilacqua*, 458 F. Supp. 610 (D.R.I. 1978), aff'd on other grounds, 605 F.2d 586 (1st Cir. 1979). *Michigan Ass'n for Retarded Citizens* v. *Smith*, 475 F. Supp. 990, 992 (E.D. Mich. 1979), held that the district court had jurisdiction under, *inter alia*, 42 U.S.C. 1983 and 6010, of a suit by residents of a mental retardation institution to remedy conditions in that institution. *Kentucky Ass'n for Retarded Citizens* v. *Conn*, No. C-78-0157L(A) (W.D. Ky. March 21, 1980), did not explicitly address the question of a private right of action under 6010, but considered the merits of a private claim under that Section.

of this holding is reaffirmed by more recent decisions of this Court, which emphasize that implication of a private cause of action is a question solely of statutory construction. *Touche Ross & Co.* v. *Redington*, 442 U.S. 560, 568 (1979); *Cannon* v. *University of Chicago*, 441 U.S. 677, 688 (1979). In resolving that question, the Court held, it is necessary to determine "whether Congress intended to create the private right of action asserted." *Touche Ross & Co.* v. *Redington, supra*, 442 U.S. at 568. See also *Transamerica Mortgage Advisors, Inc.* v. *Lewis*, 444 U.S. 11 (1979).[44]

The language, structure, and circumstances of enactment of Section 6010 strongly suggest congressional intent to provide a private cause of action (cf. *Transamerica Mortgage Advisors, Inc.* v. *Lewis, supra*, 444 U.S. at 18). The statutory language asserts that the developmentally disabled have "a right to appropriate treatment, services and habilitation," and the "Federal Government and the States both have an obligation" to assure that public funds are not provided to institutions that do not provide such treatment (42 U.S.C. 6010(1) and 6010(3)). Moreover, the personal rights described "are in addition to any constitutional or other rights otherwise afforded."

The strong implication of this language that the described rights are to be judicially enforceable by

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[44] The other factors identified in *Cort* v. *Ash, supra*, 422 U.S. at 78, also support a private remedy. The statute was enacted for the *especial* benefit of the developmentally disabled, and although the treatment of the mentally retarded is traditionally a concern of the States, it is entirely appropriate to infer a cause of action based solely on federal law to assure that federal funds do not support inappropriate state programs.

the individuals affected is substantiated by the legislative history. As noted, *supra*, pages 19-20, the Senate Committee focused on the role of the federal courts in remedying institutional conditions—frequently as the result of suits by residents of the institutions themselves. The clear implication was that the statute under consideration was to assist in that process, by providing a further source of authority for correction of conditions that the Senate viewed as intolerable.[45]

While the conference committee refused to adopt the detailed statutory criteria proposed by the Senate, it did agree that the rights that were specified "should be protected and assured by * * * the courts." 121 Cong. Rec. 29819 (1975). This statement must be read in light of the state of the law on judicial remedies in 1975. See *Cannon* v. *University of Chicago*, *supra*, 441 U.S. at 696-698. By that time, four other enactments protecting or creating rights in certain classes—the Voting Rights Act of 1965, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1973—had been held to have created implied private causes of action. *E.g.*, *Allen* v. *State Board of Elections*, 393 U.S. 544 (1969); *Bossier Parish School Board* v. *Lemon*, 370 F. 2d 847 (5th Cir.), cert. denied, 388 U.S. 911 (1967); *Gautreaux* v. *Chicago Housing Authority*, 265 F. Supp. 582 (N.D. Ill. 1967); see *Lau* v. *Nichols*, 414 U.S. 563 (1974). Moreover, in 1972 Congress had

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[45] The same Senate Committee which considered the "Bill of Rights" had stated that Section 504 created judicially enforceable private rights. S. Rep. No. 93-1297, 93d Cong., 2d Sess. 38, 40 (1974); see *Camenisch* v. *University of Texas*, 616 F.2d 127, 131 (5th Cir. 1980), and cases there cited.

created a right of action under Title IX through a statement of rights without expressly providing a judicial remedy. *Cannon* v. *University of Chicago*, *supra*. Congress had ample reason to believe that an explicit statement of rights in a statute such as Section 6010 was sufficient to permit enforcement by the benefited class of the rights described there.[46]

The structure of the Act also suggests a congressional intent that there be private judicial remedies. No other adequate remedy was explicitly provided. There was in existing law a procedure for terminating funds allocated under the Act to states that did not comply with the Act, and this was preserved. 42 U.S.C. 6065, 6068.[47] Congress was well aware, however, that fund termination was an inadequate remedy for the important rights Congress sought to protect by enacting Section 6010.[48]

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[46] Petitioners' suggestion that Congress meant to limit court enforcement to suits by the United States (Br. 33 n.52) is not supported by any intent expressed or implied by Congress. Cf. *Cannon* v. *University of Chicago*, *supra*, 441 U.S. at 691-706.

[47] Section 6065 authorizes the Secretary, not private injured parties, to institute fund termination proceedings. The Secretary's regulations authorize intervention in such proceedings by "interested parties" (45 C.F.R. 1386.94(b)(1)).

[48] The Court has cautioned, *Cannon* v. *University of Chicago*, *supra*, 441 U.S. at 711:

> The fact that other provisions of a complex statutory scheme create express remedies has not been accepted as a sufficient reason for refusing to imply an otherwise appropriate remedy under a separate section. * * * Rather, the Court has generally avoided this type of "excursion into extrapolation of legislative intent," * * *

Although the administrative procedure of Section 6065 may help to vindicate the interest of the United States in partially freeing itself from further financing inappropriate institutions—one purpose of the statute—it is of little use in correcting the condition.[49] Termination of the funds provided by the Act would not eliminate the publicly financed wrongs done by institutions such as Pennhurst, because the larger volume of Medicaid funding, as well as state funding, would continue.[50]

Moreover, here, as in the statute under consideration in *Cannon* v. *University of Chicago*, *supra*, 441 U.S. at 704-706 (footnotes omitted):

> [Congress] sought to accomplish two related, but nevertheless somewhat different, objectives. First, Congress wanted to avoid the use of federal resources to support discriminatory practices; second, it wanted to provide individual citizens effective protection against those practices. * * *
>
> The first purpose is generally served by the statutory procedure for the termination of federal financial support * * * [but] [t]hat remedy * * * often may not provide an appropriate

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unless there is other, more convincing, evidence that Congress meant to exclude the remedy.

[49] The elimination of federal funding of inadequate state institutions (whose inadequacies typically can be traced at least in part to insufficient funding) is scarcely an appropriate way of improving conditions in those institutions.

[50] Indeed, Section 6065 provides only for the termination of the funds available under the Developmentally Disabled Assistance and Bill of Rights Act, while Section 6010(3) states that no "public funds" are to be provided to inadequate institutions. See notes 19 & 33, *supra*.

> means of accomplishing the second purpose if merely an isolated violation has occurred. * * * The award of individual relief to a private litigant who has prosecuted [his] own suit is not only sensible but is also fully consistent with—and in some cases even necessary to—the orderly enforcement of the statute.

Finally, the requirement of 42 U.S.C. 6012 that States establish advocacy systems with the authority to pursue "legal * * * and other appropriate remedies to insure the protection of the rights of * * * persons who are receiving treatment, services, or habilitation within the State" is also inconsistent with an intent that the Secretary's administrative remedies were to be the only means available to protect Section 6010 rights.

III. THE REMEDY FASHIONED BY THE COURT BELOW WAS AN APPROPRIATE EXERCISE OF ITS DISCRETION

In many respects, Pennhurst is a paradigm of the institutions that prompted Congress to enact Section 6010.[51] The unchallenged factual findings of the district court clearly show that incarceration in Pennhurst violates the specific requirements of Section 6010 in two separate respects: The residents neither receive "appropriate treatment, services, and habilitation," nor are they afforded the "minimum standards" of physical care.

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[51] Much of the description of the "totally unacceptable conditions [that] still prevail" in public mental institutions cited by the Senate (S. Rep. No. 94-160, *supra*, at 28-30) applies directly to Pennhurst. See J.A. 18a-46a.

Assessments of residents' habilitation needs are inadequate (J.A. 27a). The amount of programming for residents is substantially less than the minimum required by any recognized professional standard (J.A. 28a-29a). Residents who develop aggressive maladaptive behavior are treated with drugs and physical restraints that interfere with the acquisition and practice of skills needed to overcome the aggressive behavior. The inadequacies of Pennhurst, therefore, deprive Pennhurst residents of habilitation "appropriate to [their] needs" under any conceivable interpretation of "appropriate."

Pennhurst's failure to meet the minimum physical care standards defined by Section 6010(3) is equally clear. Inadequate staff supervision permits food stealing (J.A. 34a-36a), so residents are not assured "a nourishing, well-balanced daily diet" (42 U.S.C. 6010(3)(B)(i)). Physical and chemical restraints are used as substitutes for habilitation programs and in amounts that interfere with habilitation, in violation of Sections 6010(3)(B)(ii) and (iii). See J.A. 29a-33a. And Pennhurst never has met applicable standards for building safety (J.A. 19a-20a n.14), as required by Section 6010(3)(B)(iv).[52]

On this record, the relief approved by the court of appeals is appropriate and well within the court's power to remedy the "flagrant violation" (J.A. 47a)

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[52] Although the district court made no findings on Pennhurst's policy regarding visits by relatives (see 42 U.S.C. 6010(3)(B)(v)), its isolated location and the large geographic area from which its residents are drawn (J.A. 14a, 19a) make family visits difficult—43% of the residents had had no family contact within three years of trial (J.A. 20a).

of the rights of Pennhurst residents. The court of appeals carefully followed judicial precepts and the commands of the statutes in tailoring its relief. It properly limited its remedy to curing the conditions that offend the statute. *Milliken* v. *Bradley*, 433 U.S. 267, 279-288 (1977).[53] The court of appeals thus approved only those parts of the district court's order that were designed to protect and secure the rights of Pennhurst residents to habilitation appropriate to their individual needs.[54]

The court of appeals based its ruling "on the *nature* of the rights being enforced in this case" (J.A. 156a). The central objective of its remedy is the same as the objective of Section 6010: to create a mechanism for ensuring that each individual patient receives "treatment, services, and habilitation which [are] appropriate to [his] needs" 42 U.S.C. 6010(3)(A). The court of appeals sanctioned the use of a master to monitor the "complex and lengthy process" (J.A. 148a) of providing each Pennhurst resident with an appropriate habilitation plan. The court of appeals noted that this procedure was designed to give all parties an opportunity to partici-

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[53] Petitioners' argument that the remedy should have been limited to terminating federal funds to Pennsylvania (Br. 34-39) ignores the equitable discretion of the courts to effectuate the purposes of the statute. Cf. *Cannon* v. *University of Chicago, supra*, 441 U.S. at 704-706; *Regents of the University of California* v. *Bakke*, 438 U.S. 265, 419-420 n.26 (1979) (Stevens, J., concurring).

[54] The district court's order to provide alternative employment for Pennhurst employees was reversed because it was not "reasonably related" to providing appropriate habilitation (J.A. 153a).

pate in the development of habilitation plans (J.A. 151a) and was imposed by the district court only after Pennhurst officials had refused to devise and present their own remedies (J.A. 150a).[55]

While the court of appeals did not find "clearly erroneous the trial court's determination that, for the retarded class members as a whole, Pennhurst cannot be an appropriate setting in which to provide habilitation" (J.A. 156a), it reversed the district court's order prohibiting any institutional placement. Although the court of appeals read the Act as creating a strong presumption against such placements, it concluded that the statutory requirement for individualized habilitation plans prohibited a *per se* rule against all institutional placements.

The court of appeals' finding of a statutory preference for community living arrangements is clearly

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[55] Petitioners in No. 79-1404 question the propriety of the use of a master (No. 79-1404 Pet. 3, 16-17). Petitioners' discussion in their joint brief on the merits of their objections to the relief ordered is limited to the contention that the only relief that could properly be awarded is the termination of federal funding (Br. 34-39). In any event, the appointment of the master violates neither Rule 53, Fed. R. Civ. P., nor principles of federalism. It is common and entirely proper for courts to employ masters to assist them in devising the specific and necessary measures to effect a complex remedy. *E.g.*, *Gary W.* v. *Louisiana*, 601 F.2d 240, 244-246 (5th Cir. 1979); *Morgan* v. *Kerrigan*, 530 F.2d 401, 427 (1st Cir.), cert. denied, 426 U.S. 935 (1976); *Cruz* v. *Hauck*, 515 F.2d 322, 328-331 (5th Cir. 1975), cert. denied, 424 U.S. 917 (1976); *Davis* v. *Watkins*, 384 F. Supp. 1196 (N.D. Ohio 1974); *Pennsylvania Ass'n for Retarded Children* v. *Pennsylvania*, 334 F. Supp. 1257 (E.D. Pa. 1971); *Hart* v. *Community School Bd. of Brooklyn, N.Y., School Dist. #21*, 383 F. Supp. 699, 766-767 (E.D. N.Y. 1974).

correct.[56] The device of employing a presumption against institutionalization is not only a reasonable means of implementing this statutory preference, it is also entirely consistent with the factual record in this case.[57] That presumption will ensure that only those persons whose disabilities require institutionalization in a facility like an "improved" Pennhurst will be placed there; and it will fulfill the obligation of the state and federal governments not to support institutions that do not provide treatment "appropriate" to the needs of the persons in them. Cf. 45 Fed. Reg. 31014 (1980). (Proposed Health and Human Services Regulations to implement Developmentally Disabled Assistance and Bill of Rights Act). In contrast, an order like that suggested by the dissent below (J.A. 163a), requiring the State to transform Pennhurst into a suitable place for habilitation for the full range of mentally retarded persons currently residing there, would be insufficient for several reasons.

Improvement of Pennhurst would not adequately address the individual needs of persons who should be in community living arrangements. For them, even an improved Pennhurst would not be an appropriate placement (J.A. 157a). Indeed, no pro-

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[56] The Senate Committee which reported the original "Bill of Rights" expressed its strong disapproval of placing mentally retarded persons in institutions unnecessarily, endorsed the principle of "normalization", and cautioned that its specification of standards for institutional care where it is found necessary should not be construed as support for unnecessarily placing mentally retarded persons in institutions. S. Rep. No. 94-160, *supra*, at 33-34. The compromise bill that was enacted retained the preference for treatment in the least restrictive environment (42 U.S.C. 6010(2)).

[57] The evidence in this record summarized by the district court (J.A. 18a-40a) shows that confinement in a large, iso-

fessional person, including state officials responsible for Pennhurst, argued that anyone at Pennhurst needs to be there, cf. *Parham* v. *J.R.*, 442 U.S. 584 (1979).[58] On the contrary, the superintendent of the institution agreed that "it would be to the advantage and benefit of [Pennhurst's] retarded population * * * to be serviced in a community setting" (Tr. 22-171 to 22-172). The uniform opinion of the professionals qualified as experts in the field of mental retardation was that Pennhurst could not, as a practical matter, be made a suitable place for habilitation (Tr. 2-95 to 2-96; 13-116 to 13-131; 14-5 to 14-10; 22-171 to 22-172).

Moreover, the state had itself selected the option of phasing Pennhurst out, rather than attempting to transform it into an appropriate habilitation facility. The state legislature had already directed the construction of alternative living arrangements with the aim of decreasing the number of residents at Pennhurst.[59] The defendants themselves planned to close Pennhurst eventually, on an indefinite schedule that contemplated the removal of all residents from Pennhurst by the early 1980's (J.A. 42a, 78a). While state policy choices should not be controlling where violations of federal rights are found, deference to state policies and plans is a proper consideration for federal courts in devising a remedy when the state policies are consistent with congressional objectives.[60]

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lated institution like Pennhurst generally harms, rather than helps, the person confined.

[58] In contrast to Pennhurst, the mental hospital involved in *Parham* was "well staffed and well-equipped." 442 U.S. at 616, 618, 597-598.

[59] At trial time, $18 million of the money appropriated by the legislature for this endeavor remained unspent (J.A. 44a).

[60] In addition, deference to state policies avoids the necessity of "second guessing" state professional opinion. See,

In sum, the remedy required by the court of appeals was appropriately tailored to remedy the statutory violations proved in this record.

IV. THE COURT OF APPEALS' APPLICATION OF PENNSYLVANIA LAW WAS CORRECT AND SUPPORTS THE REMEDY HERE

Pennsylvania statutes impose a duty on defendants to "assure within the State the availability and equitable provision of adequate * * * mental retardation services for all persons who need them." Pa. Stat. Ann. tit. 50, § 4201 (Purdon 1969). The words of the statute are not ambiguous. See *In re Joyce Z*, 4 Pa. D. & C.3d 596 (Allegheny County C.P. 1975); cf. *Hoolick* v. *Retreat State Hospital*, 354 A.2d 609 (Pa. Commw. Ct. 1976), aff'd, 382 A.2d 739 (Pa. 1978). Petitioners' argument that state statutes impose an obligation only to provide "food, shelter, medical care and supervision" (Br. 42) is amply answered by the opinions of the court of appeals and the district court. See *Huddleston* v. *Dwyer*, 322 U.S. 232, 237 (1944); *Estate of Spiegel* v. *Commissioner*, 335 U.S. 701, 707-708 (1949); cf. *Eubanks* v. *Clarke*, 434 F. Supp. 1022, 1027 (E.D. Pa. 1977).[61]

Petitioners' obligation to undertake the habilitation of retarded persons in Pennsylvania is thus not solely a matter of federal compulsion. Whatever options may be available to the state under federal

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e.g., *Bowring* v. *Godwin*, 551 F.2d 44 (4th Cir. 1977); cf. *Bell* v. *Wolfish*, 441 U.S. 520 (1979).

[61] Petitioners rely on the Pennsylvania civil commitment statute, Pa. Stat. Ann. tit. 50, § 4406(a) (Purdon 1969), which prescribes the standards for commitment of mentally retarded persons. This statute says nothing, however, about petitioners' duty to such persons once committed.

law to decline to undertake services to mentally retarded persons, see *Rosado* v. *Wyman*, 397 U.S. 397 (1970) (Pet. Br. 35-36), those options are not available to petitioners under Pennsylvania law. The decision below thus rests on an independent and adequate state ground, as we stated in opposing certiorari (Br. in Opp. 9-12). In any event, the pertinent requirements of state law were thus appropriately accommodated in the remedy devised by the court of appeals for the federal statutory violations found in this case.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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